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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. P1300CR20081339

Division 6

**DEFENDANT'S MOTION IN  
LIMINE TO EXCLUDE  
EVIDENCE OF ALLEGED  
CRUEL AND DEPRAVED  
CONDUCT**

(Oral Argument Requested)

Defendant Steven C. DeMocker, by his counsel, hereby moves this Court for an Order in limine precluding the State from offering any evidence that the murder of Carol Kennedy was committed in an especially cruel or depraved manner, and prohibiting the State from making any such argument to the jury in this case. This motion is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

On April 9, 2010, this Court struck the f(6) "cruel and depraved" death penalty aggravator, *inter alia*, as a sanction for disclosure violations. Accordingly, any and all

1 evidence previously disclosed by the State to support that aggravator is now irrelevant  
2 and should be precluded under Rules

3 Among the evidence to be precluded, to the extent it deals with the cruel and  
4 depraved allegation will be:

- 5 • Pertinent testimony of Dr. Keen
- 6 • Pertinent testimony of Dr. Fulginitti
- 7 • The autopsy report, including photographs and the subsequent staged
- 8 photographs with a golf club post-autopsy
- 9 • Dr. Fulginitti's report, diagrams, and photographs
- 10 • Crime scene photographs
- 11 • Pertinent testimony from law enforcement officers and first responders

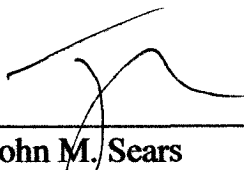
12 In addition, the State should not be permitted to refer in their opening statement or  
13 closing argument to this as an example of "overkill" or to describe the facts of the murder  
14 in a way that amounts to a claim of cruelty or depravity on the part of Mr. DeMocker.

### 15 CONCLUSION

16 The State should be precluded the State from offering any evidence that the  
17 murder of Carol Kennedy was committed in an especially cruel or depraved manner, and  
18 prohibited from making any such argument to the jury in this case. The Court should  
19 exclude this evidence under Rules 401, 402 and 403.

20 DATED this 13<sup>th</sup> day of April, 2010.

21  
22 By:

  
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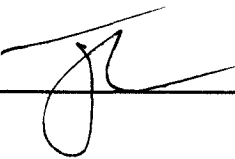
1 **ORIGINAL** of the foregoing filed  
2 this 13<sup>th</sup> day of April, 2010, with:

3 Jeanne Hicks  
4 Clerk of the Court  
5 Yavapai County Superior Court  
6 120 S. Cortez  
7 Prescott, AZ 86303

8 **COPIES** of the foregoing hand delivered  
9 this 13<sup>th</sup> day of April, 2010, to:

10 The Hon. Thomas B. Lindberg  
11 Judge of the Superior Court  
12 Division Six  
13 120 S. Cortez  
14 Prescott, AZ 86303

15 Joseph Butner, Esq.  
16 Office of the Yavapai County Attorney  
17 Prescott courthouse basket

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